

SEARCH AND SEIZURE — Government employees — limited expectation of privacy — Revised 11/2009

Public employees have a reasonable expectation of privacy in their work areas, but probable cause is not required to conduct a search of their offices, even for evidence of misconduct. In *O'Connor v. Ortega*, 480 U.S. 709 (1987), Ortega, a doctor employed at a state hospital, was suspected of work-related misconduct. He was administratively suspended and requested to stay off hospital property pending investigation of the charges. While Ortega was suspended, a team of hospital employees entered his office and searched it; the team contended that their purpose was to secure state property, but Ortega claimed its purpose was to secure evidence against him. The team removed various items of Ortega's personal property from his office; some of these items were later used as evidence in a personnel action against him.

Ortega sought damages, alleging that the search violated his Fourth Amendment rights. The Court found that Ortega had a reasonable expectation of privacy in his office. *Id.* at 719. The Court then determined that the reasonableness of the search depended on the search's context. *Id.* at 716. While personal possessions (such as a handbag or briefcase) may be protected from searches by government employers, such a protection does not apply to things such as desk drawers, filing cabinets, etc., in which work-related documents are ordinarily found, even though the employee may have placed personal items in them as well. *Id.* The Court recognized that the day-to-day operations of most offices frequently require supervisors and other employees to "enter the offices and desks of their employees for legitimate work-related reasons wholly

unrelated to illegal conduct," but rather "focused primarily on the need to complete the government agency's work in a prompt and efficient manner." *Id.* at 721. "The governmental interest justifying work-related intrusions by public employers is the efficient and proper operation of the workplace." *Id.* at 723. When employers search offices to investigate work-related employee misconduct, their interest is primarily in making the agency run properly, not in enforcing the criminal law. *Id.* at 724. Therefore, probable cause is not required to justify an investigatory search of a government worker's office by an employer; a reasonableness standard is sufficient. *Id.*

"Government offices are provided to employees for the sole purpose of facilitating the work of an agency. The employee may avoid exposing personal belongings at work by simply leaving them at home." *Id.* at 725.

Under Arizona law, public employees probably do not have a reasonable expectation of privacy in private documents they place on their work computers. In *Star Publishing Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (App. 1994), the Pima County Attorney's Office was suspected of some improprieties. To investigate that office, the Pima County Board of Supervisors subpoenaed the computer backup tapes of that office containing all documents from that office for 1993, including e-mail communications of employees. The County Attorney's Office opposed turning over the tapes for several reasons, including an argument that the tapes should be immune from disclosure in order to protect public employees' privacy rights. The Court of Appeals said, "we doubt that public employees have any legitimate expectation of privacy in personal documents that they have chosen to lodge in public computer files;"

however, the record was insufficient for the Court of Appeals to actually decide that question. *Id.* at 434, 891 P.2d at 901.